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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 549

HARRY RENTON BRIDGES,
Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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INDEX

	PAGE
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	3
Specification of errors to be urged	3
Reasons for granting the writ	4
Conclusion	7

CITATIONS

Cases:

Baumgartner v. *United States*, 322 U. S. 665	4
Cole v. *Arkansas*, 333 U. S. 196	7
De Jonge v. *Oregon*, 299 U. S. 353	7
Klapprott v. *United States*, 335 U. S. 601	4
Schneiderman v. *United States*, 320 U. S. 118	4
United States v. *Bruno*, 25 F. Supp. 793, D. C. N. J.	5, 6

Statutes:

28 U. S. C. Sec. 1254 (1)	2
8 U. S. C. Sec. 738(e)	2, 4
18 U. S. C. Sec. 1425	5
18 U. S. C. Sec. 1015(a)	5
Act of March 3, 1903, c. 1012, Sec. 39	5
Act of June 29, 1906, c. 3592, Sec. 23	6

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Petitioner, Harry Renton Bridges, respectfully prays that a writ of certiorari issue to review a judgment of United States Court of Appeals for the Ninth Circuit entered in the above entitled case on September 6, 1952.

OPINIONS BELOW

The opinion of the District for the Northern District of California is reported at 90 F. Supp. 989. The opinion of the Court of Appeals for the Ninth Circuit affirming the judgment below has not yet been officially reported; it is printed at Tr. 22-25.

JURISDICTION

The judgment of The Court of Appeals was entered on September 6, 1952. The order of the Court of Appeals denying petitioner's timely petition for rehearing was entered on November 18, 1952. On December 9, 1952 Mr.

Justice Douglas of this Court entered an order extending the time for filing a petition for certiorari to and including January 16, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

The Court of Appeals for the Ninth Circuit affirmed an order of the District Court for the Northern District of California revoking the citizenship of petitioner Bridges pursuant to 8 U. S. C. 738 (e) after his conviction for making a false statement in his naturalization proceeding.

There is this day being filed a petition for a writ of certiorari (No. 574) to review the affirmance of the judgment of conviction.

The questions presented here are:

1. Whether the conviction sought to be reviewed in that case should not be set aside and whether, therefore, the order here sought to be reviewed should not automatically fall with it.

2. Whether there was a lawful basis for the order of revocation since petitioner was not convicted of "knowingly procuring naturalization in violation of law" as is required by 8 U. S. C. 738 (e).

STATUTES INVOLVED

The relevant provisions of 8 U. S. C. 738 (e) upon which the revocation of petitioner's citizenship was based are:

> "When a person shall be convicted under this chapter of knowingly procuring naturalization in violation

of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is hereby conferred to the courts having jurisdiction of the trial of such offense to make such adjudication."

STATEMENT

Since, as indicated, the revocation order here sought to be reviewed arose out of and is dependent upon the conviction under review in No. 5748 there is no need to restate the factual background of the cases. We respectfully refer the court to the statement contained in the petition in that case.

After the criminal conviction had been returned, the Government moved for, and succeeded in obtaining over the opposition of petitioner, an order from the trial court declaring petitioner's citizenship revoked and a decree revoking, setting aside and declaring void the order admitting him to citizenship. (Tr. 3, 8; 90 F. Supp. 989).

Appeals from these orders were timely filed to the Court of Appeals for the Ninth Circuit which affirmed them on September 6, 1952. A petition for rehearing was denied on November 18, 1952.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred in affirming the trial court's revocation of petitioner's citizenship and in holding that petitioner had been convicted of knowingly procuring naturalization in violation of law.

REASONS FOR GRANTING THE WRIT

1. The petition for the writ in No. 548 shows the reasons why the conviction on a charge of making a false statement in the naturalization proceedings should be reversed and set aside. We respectfully refer the Court to the reasons for granting the writ set forth in that petition. The writ here should issue so that upon the disposition of that case appropriate orders may be made in this one.

2. Irrespective of the disposition of that case, there is an additional reason why the writ should be granted here.

Petitioner was not convicted of knowingly procuring naturalization in violation of law. Section 738(e) is a very carefully drafted statute. It does not provide that upon conviction for *any* violation of the nationality code citizenship may be revoked. On the contrary, it provides that revocation shall occur only upon conviction for "knowingly procuring naturalization in violation of law". These words are clearly words of limitation and must be strictly construed against the Government (*cf. Schneiderman* v. *United States,* 320 U. S. 118; *Baumgartner* v. *United States,* 322 U. S. 665, and *Klapprott* v. *United States,* 335 U. S. 601). If Congress had intended to authorize revocation for any violation of the Nationality Law, it would have not have inserted these words of limitation into Section 738(e).

Not only was petitioner not convicted of knowingly procuring naturalization in violation of law, he was not even charged with that offense. He was charged in the first count with conspiracy which is a separate offense and neither of the courts below predicated their holdings upon his conviction on the conspiracy count. He was charged in the

second count with false swearing in a naturalization proceeding. That charge is a different one from the charge of knowingly procuring naturalization in violation of law.[1]

In order to sustain its order of revocation, the trial court held that the conviction for one offense "constitutes" a conviction for the other (Tr. 10). The court below did not even consider the issue (Tr. 25).

The two offenses are separate and distinct. Knowingly procuring citizenship in violation of law is now to be found in 18. U. S. C. 1425, which is contained in Chapter 69 of Title 18, a chapter dealing exclusively with matters relating to nationality and citizenship. False swearing in a naturalization proceeding is now to be found in 18 U. S. C. 1015(a) which is contained in Chapter 47 of Title 18, a chapter dealing generally with false swearing and fraudulent statements and not specifically with naturalization or nationality matters.

Not only are these two sections separate and distinct parts of the code at the present time but throughout their entire history they have been separate and distinct (*cf. United States* v. *Bruno,* 25 F. Supp. 793 (D. C. N. J.)) and the added punishment of automatic revocation has always been applied only to the offense of knowingly procuring naturalization in violation of law and not to the offense of false swearing in a naturalization proceeding.[2]

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[1]The charge in the indictment did not depend upon the fact of procuring naturalization and was sustainable, irrespective of whether or not citizenship had been procured. *United States* v. *Bruno, infra.*

[2]Sec. 39 of the Act of March 3, 1903 (57 Cong. 2d Sess., Ch. 1012) (32 Stat. 1213, p. 22) provided

> "First: Any person who procures naturalization in violation of the provisions of this section shall be fined * * * and imprisoned * * * *and* the court in which such conviction is had

In 1938, for example, the two offenses were in separate codes, and even apart from the fact that automatic revocation followed upon conviction for illegal procurement and not for false swearing, they carried different criminal penalties. Thus, in *United States* v. *Bruno, supra,* the statutes are quoted which make it clear that the offense of illegal procurement was punished by a fine of not more than *$5,000* and imprisonment of not more than five years or both, while the offense of false swearing was punished by a fine of not more than *$1,000* and imprisonment for not more than five years. 25 F. Supp. 793 at p. 794.

In the foregoing case, the court said: "False procurement of naturalization and false swearing in a naturalization proceeding are entirely different. Under the view this court takes the defendant was guilty of an offense when he swore falsely in the naturalization proceeding. He committed another offense when he procured naturalization based upon his false swearing". *Ibid* at p. 794.

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shall thereupon adjudge and declare the order or decree and all certificates admitting such person to citizenship null and void."

"Second: Any person who * * * in any naturalization proceeding procures or gives false testimony as to any material fact shall be fined * * * and imprisoned * * *"

Section 23 of the Act of June 29, 1906 (59th Cong., C. 3592) (34 Stat. 596, p. 603), provided as follows:

"First: * * * Any person who knowingly procures naturalization in violation of the provisions of this Act shall be fined * * * and imprisoned * * * *and* upon conviction the court in which said conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void."

"Second: * * * Any person who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact shall be fined * * * and imprisoned * * *".

The Government might have, but it did not charge, petitioner with the offense of illegal procurement. It cannot now exact from him a penalty which attaches only to the uncharged offense. To impose a penalty for a crime not charged would be a "sheer denial of due process". (*Cf. De Jonge* v. *Oregon*, 299 U. S. 353 and *Cole* v. *Arkansas*, 333 U. S. 196).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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January, 1953.